

DIGEST OF ETHICS ADVISORY PANEL
OPINION 89-8, REQUEST #55
Issued May 4, 1989

An attorney seeks Panel advice as to whether it is proper for him to undertake representation of a client under the specific circumstances he describes.

The inquiring attorney advises the Panel that the client is a four person real estate partnership. One of those four partners is also a law partnership and wishes to pursue legal action against an insurance company. The partnership wishes to employ the inquiring attorney. The member of the partnership who is also the inquiring attorney's law partner would not be a witness in the legal action.

The Panel takes the position that it is proper for the inquiring attorney to represent the real estate partnership under the circumstances he has described. The Panel also suggests that the propriety is not dependent on whether or not the law partner is called as a witness by either side.

Rule 3.7(b) provides:

A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Under the specific facts set forth for Panel review, neither Rule 1.7 titled "Conflict of Interest: General Rule" nor Rule 1.9, titled "Conflict of Interest: Former client" would affect the application of Rule 3.7(b).

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.